A **MACH 8 SDN BHD v. KERAJAAN NEGERI SELANGOR & ANOR**

HIGH COURT MALAYA, SHAH ALAM
VAZEER ALAM MYDIN MEERA J
[JUDICIAL REVIEW NO: BA-25-6-01-2017]
10 MARCH 2020

B

ADMINISTRATIVE LAW: *Judicial review – Application for – Review of decision by State Authority and Land Administrator – Acquisition of land – Amendment to declaration of intended acquisition after conclusion of land enquiry and issuance of Form K – Whether allowed – Whether procedural requirements of Land Acquisition Act 1960 must be strictly complied with – Whether declaration procedurally improper and abuse of process – Whether State Authority and Land Administrator acted in excess of jurisdiction – Land Acquisition Act 1960, s. 8*

C

LAND LAW: *Acquisition of land – Objection to acquisition – Amendment to declaration of intended acquisition after conclusion of land enquiry and issuance of Form K – Whether amendment could be made after declaration of intended acquisition has been published – Whether amendment to defective declaration could only be made within two years from first declaration – Whether declaration procedurally improper and abuse of process – Whether procedural requirements of Land Acquisition Act 1960 must be strictly complied with – Land Acquisition Act 1960, s. 8*

D

E

The applicant entered into a sale and purchase agreement dated 1 July 2015 to purchase five plots of land ('SPA') from the registered owner, Wiramuda (M) Sdn Bhd ('Wiramuda'). On 23 July 2015, the first respondent, the Selangor State Authority, published in the Government *Gazette*, Form D ('first declaration'), setting out lands to be acquired for a project known as 'Projek Lebuhraya Bertingkat Sungai Besi - Ulu Klang' ('SUKE project'). Amongst the lands listed in the first declaration were four of the five plots purchased by the applicant as in the SPA. Arising from the intended compulsory acquisition, and to deal with the consequences thereof, the applicant entered into a supplemental agreement dated 25 August 2015 with Wiramuda. On 19 December 2016, the State Authority published another Form D in the Government *Gazette* ('second declaration') which in effect amended the area to be acquired. The applicant, however, chose to proceed with the purchase of the five plots. The land acquisition proceedings commenced for lands 1 to 3 through the issuance of Form E by the second respondent, the Land Administrator of Hulu Langat District ('LA'). However, the land area to be acquired stated in Form E for land 3 was smaller than the area stated in the second declaration. Upon conclusion of the land inquiry, the second respondent by notice of award and offer of compensation in Form H, made an award to Wiramuda. The applicant, upon being aware of the apparent discrepancies in the area stated to be acquired, filed its Form N objecting to the award by the second respondent. When the SUKE project concessionaire ('concessionaire') attempted to enter the lands,

F

G

H

I

the applicant filed an originating summons ('OS') against the second respondent and the concessionaire seeking clarification on the correct area of the lands that could be acquired before possession of the acquired lands were given. Form K for the scheduled lands acquired was issued on 13 September 2017, but the applicant came to know of it only sometime in October 2017. After the issuance of Form K, and pending the disposal of the OS, the respondents published in the Government *Gazette* dated 9 November 2017 another Form D ('impugned declaration') purporting to correct the area stated to be acquired for land 1 and land 3 in the second declaration. The applicant ceased occupation of the lands when the second respondent entered into physical possession of the acquired lands. In this judicial review application, the applicant sought to review the decision of the respondents made on 9 November 2017 in publishing in the Government *Gazette* an amended Form D which amended the land area to be acquired after the conclusion of the land enquiry and after the issuance of Form K ('impugned decision').

Held (allowing applicant's application):

(1) The declaration of intended acquisition under s. 8 of the Land Acquisition Act 1960 ('LAA') together with the particular lands and areas thereof specified in the Schedule were published in the Government *Gazette* on 23 July 2015 ('first declaration'). Subsection 8(2) of the LAA provides that a copy of the list of scheduled lands, *ie*, Form C, as amended, if necessary, shall be included as a schedule to the declaration in Form D. Thus, once the Form D declaration of intended acquisition has been published, the law makes no provision for its amendment. Even though there was repeated reference to the schedule to the declaration in Form D that was *gazetted* under sub-s. 8(2), nowhere was there any mention of an amended declaration after the Form D had been *gazetted*. (paras 23 & 27)

(2) Any amendment to the defective declaration in Form D can be made provided that it is made within two years from the first s. 8 declaration that was *gazetted*. In this case, the impugned declaration was made after the lapse of the two years and after the issuance of the Form K, which confirmed the LA's taking of formal possession of the acquired land and which also marked the end of the acquisition process. The reason for the land acquisition process to be concluded within two years as mandated by sub-s. 8(4) of the LAA is primarily related to the issue of market value of the land acquired. The market value of the land is determined as at the date of the publication in the *Gazette* of the declaration under s. 8. Hence, once the acquisition process had come to an end, the respondents could not retrospectively amend the s. 8 declaration in Form D. (paras 32 & 33)

(3) Section 8(2) of the LAA provides that any amendment to the list of scheduled lands as in Form C must be made prior to the publication of Form D in the Government *Gazette*. The impugned declaration was procedurally improper and *ultra vires* the provisions of the LAA. The amending of the list of scheduled lands after the issuance of Form K and further appending a list of scheduled lands that were not *gazetted* to Form K was an abuse of process and clearly *ultra vires* the powers of the second respondent. The LA's purported act of informing the attendees at the land enquiry of the errors in the second declaration despite knowing that strict compliance with the provisions of the Act was required could not cure the impropriety. There must be strict compliance of the procedural requirements of the LAA. (paras 35 & 36)

(4) The respondents, in issuing the impugned declaration, had acted in excess of jurisdiction and were, therefore, guilty of an error of law in their action, *ie*, purporting to exercise a power that they did not have and/or acting *ultra vires* their powers. Thus, the action and/or decision of the respondents in issuing the impugned declaration amounted to an illegality that was susceptible to curial intervention. (para 40)

Case(s) referred to:

Asmth Sdn Bhd & Anor v. Pentadbir Tanah Daerah Johor Bahru & Anor [2007] 8 CLJ 445 HC ***(refd)***

Associated Provincial Picture Houses Ltd v. Wednesbury Corp [1948] 1 KB 223 ***(refd)***

Booi Kim Lee v. YB Menteri Sumber Manusia, Malaysia & Anor [1999] 4 CLJ 121 HC ***(refd)***

Chase Perdana Bhd v. Md Afendi Hamdan [2009] 6 CLJ 501 FC ***(refd)***

Council of Civil Services Unions & Ors v. Minister Of Civil Service [1985] AC 374 ***(refd)***

Ee Chong Pang & Ors v. The Land Administrator Of The District Of Alor Gajah & Anor [2013] 3 CLJ 649 CA ***(refd)***

Harianto Effendy Zakaria & Ors v. Mahkamah Perusahaan Malaysia & Anor [2014] 8 CLJ 821 FC ***(refd)***

Hong Lee Trading & Construction Sdn Bhd v. Taut Ying Realty Sdn Bhd [1991] 1 CLJ 121; [1991] CLJ (Rep) 722 HC ***(refd)***

Ismail Bakar & Ors v. Director Of Lands and Mines, Kedah Darul Aman [2010] 9 CLJ 810 CA ***(refd)***

Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johor Bahru [1996] 3 CLJ 573 HC ***(refd)***

Lam Eng Rubber Factory (M) Sdn Bhd v. Pengarah Alam Sekitar, Negeri Kedah dan Perlis & Anor [2005] 2 AMR 471 ***(refd)***

M Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor [2005] 3 CLJ 778 CA ***(refd)***

Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor [1998] 1 CLJ 227 CA ***(refd)***

Minister Of Labour & The Government Of Malaysia v. Lie Seng Fatt [1990] 1 CLJ 1103; [1990] 1 CLJ (Rep) 195 SC ***(refd)***

Mohd Shah Daud v. Pentadbir Tanah Dan Jajahan Kata Bharu [2016] 6 CLJ 806 CA ***(refd)***

Pengarah Tanah Dan Galian Negeri Kedah & Anor v. Emico Development Sdn Bhd [2000] 1 CLJ 86 CA ***(refd)***

Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd [2017] 8 CLJ 392 FC ***(refd)***

R Rama Chandran v. The Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Wong Kee Sing Reality Sdn Bhd & Ors v. The Collector Of Land Revenue, District Of Gombak [995] 1 LNS 363 HC ***(foll)***

Legislation referred to:

Federal Constitution, art. 13(1)

Land Acquisition Act 1960, ss. 7(1), 8(1), (2), (4), 9(2)(a), 10(3), 12, 22, 23, 52

Rules of Court 2012, O. 53 r. 2(4), O. 53 r. 2(3)

For the applicant - David Mathews & Tina Francis; M/s Mathews Hun Lachimanan
For the respondents - Etty Eliany Tesno; State Legal Advisor, Selangor
Watching brief:
For the Projek Lintasan Sungai Besi - Ulu Klang Sdn Bhd - Bernice Sew; M/s Zain & Co

Reported by S Barathi

JUDGMENT

Vazeer Alam Mydin Meera J:

Introduction

[1] The applicant, MACH 8 Sdn Bhd, by this judicial review application sought to review the decision of the respondents made on 9 November 2017 in publishing in the Government *Gazette* an amended Form D which amended the land area identified to be acquired after the conclusion of the land enquiry and after the issuance of Form K ("impugned decision").

Background

[2] The applicant, MACH 8 Sdn Bhd, had entered into a sale and purchase agreement dated 1 July 2015 to purchase five plots of land from the registered owner, Wiramuda (M) Sdn Bhd ("SPA"). The applicant had paid 10% of the purchase price as deposit and part payment under the SPA.

[3] The lands that the applicant had entered to purchase under the SPA were:

(i) Lot PT25163, Mukim Bandar Ampang, Daerah Hulu Langat, Negeri Selangor, held under HSD 25128 ("land 1");

(ii) Lot PT25164, Mukim Bandar Ampang, Daerah Hulu Langat, Negeri Selangor, held under HSD 25129 ("land 2");

(iii) Lot PT25165, Mukim Bandar Ampang, Daerah Hulu Langat, Negeri Selangor, held under HSD 25130 ("land 3");

(iv) Lot PT25167, Mukim Bandar Ampang, Daerah Hulu Langat, Negeri Selangor, held under HSD 25132 ("land 4"); and

A (v) Lot PT25166, Mukim Bandar Ampang, Daerah Hulu Langat, Negeri Selangor, held under HSD 25131 ("land 5");

The applicant had purchased the five plots of land for a proposed housing development.

B **[4]** On 23 July 2015, the first respondent, the Selangor State Authority, published in the Government *Gazette* a Form D ("first declaration") setting out lands to be acquired for a project known as "Projek Lebuhraya Bertingkat Sungai Besi - Ulu Klang ("SUKE Project").

[5] Amongst the lands listed in the first declaration were four of the five C plots purchased by the applicant as in the SPA. Except for land 5, the other four plots were affected by the land acquisition. The area scheduled to be acquired in the first declaration were:

Land	Acquired area (square metres)
Land 1	458.007
Land 2	60,520.844
Land 3	19,745,216
Land 4	12,809.916

D

E **[6]** Arising from the intended compulsory acquisition, and to deal with the consequences thereof, the applicant entered into a supplemental agreement dated 25 August 2015 with Wiramuda (M) Sdn Bhd.

[7] On 19 December 2016, the State Authority published another Form D in the Government *Gazette* ("second declaration") which in effect amended F the area to be acquired for lands 1 to 3 as follows:

Land	Acquired Area (square metres)
Land 1	11,038.149
Land 2	40,856.445
Land 3	80,043. 156

G

[8] Although the acreage to be acquired had changed, the applicant chose to proceed with the purchase of the five plots as land 1 being a flat piece of land facing the main road still had sufficient land remaining making it viable for the proposed housing development. The increase in the area to be H acquired for land 3 was not significant to the applicant's proposed development as land 3 was situated near a steep slope making it not suitable for development. Hence, the second declaration did not adversely affect the applicant's proposed housing development and the applicant elected to proceed with the SPA.

I

[9] The land acquisition proceedings commenced for land 4 on 21 August 2015 and for lands 1 to 3 on 11 May 2017 through the issuance of Form E by the second respondent, the Land Administrator of Hulu Langat District.

[10] However, the land area to be acquired stated in the Form E for land 3 was smaller (11,038.149sqm) than the area stated in the second declaration (80,043.156sqm), but for land 1 it was the same ie, 11,038.149sqm as in the second declaration.

[11] The applicant attended the land enquiry and the second respondent was aware of the fact that the applicant had entered into agreements to purchase the lands to be acquired.

[12] The land enquiry concluded on 20 June 2017 and the second respondent by notice of award and offer of compensation ("Form H"), made an award to the landowner, Wiramuda Sdn Bhd ... in the said Form H:

(i) for land 1, the area stated to be acquired was significantly larger (80,043.156sqm) than the area stated in the second declaration and Form E (11,038.149sqm). The difference, ie, the increase in the area acquired for land 1 is approximately 81%; and

(ii) for land 3, the area stated to be acquired in Form H was the same stated in Form E, ie, 11,038.149sqm, but different from the area stated to be acquired in the second declaration, ie, 80,043.156sqm.

[13] Sometime in July 2017, after the issuance of Form H, the applicant became aware of the apparent discrepancies in the area stated to be acquired, and filed its Form N objecting to the award by the second respondent.

[14] On 9 October 2017, the SUKE Project concessionaire ("concessionaire") attempted to enter the lands. However, as a result of the inconsistencies in the area stated to be acquired in the various statutory forms, the applicant filed an originating summons against the second respondent and the concessionaire seeking clarification on the correct area of the lands that can be acquired before possession of the acquired lands are given.

[15] The Form K for the scheduled lands acquired was issued on 13 September 2017, but the applicant came to know of it only sometime in October 2017.

[16] However, after the issuance of the Form K, and pending the disposal of the originating summons, the respondents published in the Government *Gazette* dated 9 November 2017 another Form D ("impugned declaration") purporting to correct the area stated to be acquired for land 1 and land 3 in the second declaration.

[17] On 19 December 2017, the applicant ceased occupation of the lands when the second respondent entered into physical possession of the acquired lands.

[18] Hence, this judicial review application, questioning the lawfulness of the decision of the first and/or second respondents on 9 November 2017 leading to the issuance and publication in the *Gazette* of the Form D after the issuance of the Form K ostensibly to amend the area of the land to be acquired.

Issues For Determination

[19] The issues for determination of this court are:

(i) whether the first and/or the second respondent could amend the declaration of intended acquisition (Form D) by issuance of the correctional declaration of intended acquisition dated 9 November 2017 purportedly made pursuant to s. 8 of the Land Acquisition Act 1960 ("LAA") after:

(a) the conclusion of the land enquiry; and

(b) issuance of the notice that possession has been taken of land (Form K);

(ii) whether a Form D can have retrospective effect.

Decision Of The Court

[20] I found the decision of the second respondent made in the correctional declaration of intended acquisition (Form D) dated 9 November 2017 purportedly made pursuant to s. 8 of the LAA in respect of the lands held under HSD 25128 PT 25163 and HSD 25130 PT 25165 both in the Mukim of Bandar Ampang, Daerah Hulu Langat, Selangor *vide* G*azette* Notification in the State Government of Selangor No. 3709 dated 9 November 2017 ("the impugned declaration") was illegal and *ultra vires* the powers granted to the second respondent pursuant to the said s. 8 of the LAA ("LAA") since the correctional declaration was made after the issuance of the Form K.

Reasons For The Decision

[21] When there is an intended land acquisition exercise, the Land Administrator is required to submit to the State Authority a plan of the whole area of such lands to be acquired. This must be done in accordance to the statutory requirement in s. 7(1) of the LAA that reads:

> (1) Whenever any lands are needed for any of the purposes referred to in section 3 the Land Administrator shall prepare and submit to the State Authority:
>
> (a) a plan of the whole area of such lands, showing the particular lands, or parts thereof, which it will be necessary to acquire; and
>
> (b) a list of such lands, in Form C.

Hence, by s. 7 of the LAA when any lands are needed for a public purpose, the Land Administrator will have to submit to the State Authority the necessary plan of the whole area of such lands, showing the particular lands, or part thereof, which will be necessary to acquire, and the list of such lands shall be in Form C, ie, the List of Scheduled Lands. The requirements in s. 7 is mandatory and Form C has to set out very full particulars of the lands affected by the acquisition including the names of the registered proprietor or recorded occupant.

[22] The matter then moves to the State Authority, for ultimately it is the State Authority that is vested with powers to decide on the acquisition. When the State Authority decides that the lands are needed, a declaration in Form D must be published in the *Gazette* in accordance to s. 8 of the LAA. The list of lands referred to in s. 7 ie, in Form C must be included as a schedule to the declaration. Section 8 of the LAA reads:

> (1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the *Gazette*.
>
> (2) A copy of the list of lands referred to in paragraph 7(1)(b), amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.
>
> (3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.
>
> (4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the *Gazette* in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under subsection 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.
>
> (5) Where the declaration under subsection (1) has lapsed, subsections 35(2), (3) and (4) shall apply with the necessary modifications.

The publication of Form D is the "act of acquisition" referred to in *Hong Lee Trading & Construction Sdn Bhd v. Taut Ying Realty Sdn Bhd* [1991] 1 CLJ 121; [1991] CLJ (Rep) 722. The applicants allege that the State Authority had taken possession of the scheduled lands before the declaration under s. 8 was published in the *Gazette*.

[23] Now, in this case, the declaration of intended acquisition under s. 8 of the LAA together with the particular lands and areas thereof specified in the Schedule were published in the Government *Gazette* on 23 July 2015, ie, the first declaration. Sub-section 8(2) of the LAA provides that a copy of the List of Scheduled Lands, ie, Form C, as amended, if

necessary shall be included as a schedule to the declaration in Form D. Thus, the only place where the statute provides for any amendment to be made to the List of Scheduled Lands, ie, Form C, is prior to the making of the declaration in Form D. Once the Form D declaration of intended acquisition has been published the law makes no provision for its amendment.

[24] And that was the finding of the High Court in *Wong Kee Sing Reality Sdn Bhd & Ors v. The Collector of Land Revenue, District Of Gombak* [1995] 1 LNS 363; [1995] MLJU 187, where Mahadev Shankar J (as he then was) in deciding whether a defective s. 8 declaration can be cured by a subsequent declaration in Form D held as follows:

> 51. Section 8(2) gives the State Authority power to amend the list of lands in Form C submitted by the Land Administrator. Thus there could be addition or subtraction of the total area and the actual parcels involved but this amendment must be made before the declaration in the statutory form is published. **Where a defective declaration is published it appears that there is no provision in the Act for curing the defect by publishing an amendment to the declaration**. (emphasis added)

[25] However, in *Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johar Bahru* [1996] 3 CLJ 573; [1996] 3 MLJU 391 Mohd Ghazali Yusoff J (as he then was) was of the opinion that amendments to Form D, even when duly published in the *Gazette* is permissible before the conclusion of the enquiry. The learned judge held as follows:

> The first notification, which is a declaration in Form D made pursuant to section 8 of the Act is, according to section 8(3), conclusive evidence that Lot 487 is to be acquired and hence, any proposed change in the approximate area to be acquired cannot at all, to me, vitiate or nullify the conclusiveness that Lot 487 will be acquired. In my view, the approximate area to be acquired is only a secondary matter and any amendment made as to the approximate area to be acquired before the conclusion of the enquiry by the defendant cannot vitiate or nullify that declaration. ... If the acquisition process provided for in the Act is not proceeded with within two years, the declaration lapses - this is clearly provided for in sections 8(4) of the Act which states that a declaration in Form D shall lapse and cease to be of any effect on the expiry of two years after its publication in the *Gazette* if the Land Administrator has not made an award by then. *I would think that any amendment made as to the approximate area to be acquired within the two years before the conclusion of the enquiry by the defendant cannot at all have any effect on the declaration as to its conclusiveness that the scheduled land will be acquired.* (emphasis added)

[26] Having considered the reasoning in both these cases, I am more inclined to prefer the pronouncement of the court in *Wong Kee Sing Reality Sdn Bhd & Ors v. The Collector Of Land Revenue, District Of Gombak* (*supra*) to that of *Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johor Bahru* (*supra*). This is because the LAA being a legislation that empowers the State Authority to

deprive a person of his property must be strictly interpreted in favour of the person who is to be deprived of his property so as to give the constitutional protection in art. 13(1) of the Federal Constitution. This approach was taken by the High Court in *Wong Kee Sing Reality Sdn Bhd & Ors v. The Collector Of Land Revenue, District Of Gombak* where the learned judge held:

> 50. The Land Acquisition Act is a deprivatory statute, and it is my view that for the purposes of construction it must be put on a par with penal statutes which must be strictly construed. The spirit and the letter of the Act is reflected by the repeated use of the word "SHALL" when it comes to compliance with its provisions. Thus the obligation to prepare a list of the lands required in Form C was mandatory by section 7. So was the obligation to include the list in the declaration by section 8(2). ...

This was reiterated by the Court of Appeal in *Ee Chong Pang & Ors v. The Land Administrator Of The District Of Alor Gajah & Anor* [2013] 3 CLJ 649; [2013] 2 MLJ 16 CA. (see also *Ismail Bakar & Ors v. Director Of Lands And Mines, Kedah Darul Aman* [2010] 9 CLJ 810; [2011] 5 MLJ 197).

[27] Even when the subsequent procedural steps in the acquisition process are considered, it can be seen that though there is repeated reference to the schedule (ie, list of the lands to be acquired as in Form C) to the declaration in Form D that was gazetted under sub-s. 8(2), nowhere is there any mention of an amended declaration after the Form D had been gazetted.

[28] Procedurally, after a declaration has been made under s. 8 of the LAA, s. 9(2)(a) of the LAA makes it mandatory for the Land Administrator to make a note of the intended acquisition on the register document of title. Section 9 of the LAA appears to require the endorsement to be made upon publication of the s. 8 declaration. The applicant nor the respondents have disclosed if this requirement was fulfilled. However, for the purposes of this judicial review, that is not important.

[29] Next, the Land Administrator shall commence proceedings for the acquisition by giving public notice in Form E, as is required under s. 10 of the LAA. The Form E notice shall be given in the manner as prescribed by s. 52 of the LAA. Section 10(3) of the LAA mandates that:

> (3) A copy of the schedule to the declaration in Form D *gazetted* under subsection 8(2) shall be appended to every notice in Form E.

So once again, the LAA requires the same copy of the schedule to the declaration in Form D, as gazetted, to be appended to the Form E notice. Of course, the schedule to the declaration in Form D is list of the lands to be acquired as in Form C. It is pertinent to note that sub-s. 10(3) refers to the Form D as gazetted and not as amended.

[30] The enquiry is conducted in accordance to the provisions of s. 12 of the LAA, and upon its conclusion the Land Administrator shall prepare a written award in Form G, in which he shall, in respect of each separate area of the scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry. Thus, the identification of the scheduled land is crucial to the enquiry and the making of the award.

[31] Once the award is made, the Land Administrator takes formal possession of the scheduled lands in accordance to s. 22 of the LAA which provides:

> (1) The Land Administrator shall take formal possession of any scheduled land by serving upon the occupier thereof or, if he cannot be found, by posting thereon, a notice in Form K.
>
> (2) A copy of the list of lands gazetted under subsection 8(1), or any relevant part thereof, shall be included as a schedule to the notice in Form K.

And when the Land Administrator issues the Form K, whereupon the land vests absolutely in the State Government free from all encumbrances, the acquisition process comes to an end. It is clear that the Act also requires the list of lands gazetted under sub-s. 8(1), or any relevant part thereof, to be included as a schedule to the notice in Form K. There is a purpose in this, and that is to identify with precision the exact land size and location of the land that had been acquired. The moment the Land Administrator completes Form K, he shall make a memorial on the register document of title as required under s. 23 of the LAA that the whole of such land has been acquired and has vested in the State Authority. Hence, once the Form K is issued by the Land Administrator, there cannot be any further amendment to the Form D to alter the size or location of the land to be acquired.

[32] Now, even if we were to apply the more flexible approach espoused by Mohd Ghazali Yusoff J (as then was) in *Keck Seng (Malaysia) Bhd v. Pentadbir Tanah, Johar Bahru*, the impugned declaration to amend the earlier declaration was made on 9 November 2017, which is more than two years after the first declaration was made on 23 July 2015, is not improper and not valid in law. Mohd Ghazali Yusof J said that any amendment to the defective declaration in Form D can be made provided that it is made within two years from the first s. 8 declaration that was gazetted. In the present case, not only was the impugned declaration made after the lapse of the two years, it was made after the issuance of the Form K, which confirms the Land Administrator's taking of formal possession of the acquired land, and which also marks the end of the acquisition process. There is an important reason as to why the land acquisition process must be concluded within two years as mandated by sub-s. 8(4) of the LAA. It is primarily related to the issue

of market value of the land acquired. The market value of the land is determined as at the date of the publication in the *Gazette* of the declaration under s. 8. The legislative purpose in enacting sub-s. 8(4) of the LAA was recognised by the Court of Appeal in the recent case of *Mohd Shah Daud v. Pentadbir Tanah dan Jajahan Kata Bharu* [2016] 6 CLJ 806; [2016] 3 AMR 827 where Mary Lim JCA speaking for the court held that:

> Where a person has been deprived of his property not out of his own free choice, there must be adequate compensation paid for that property. Generally, the adequacy of compensation is measured by reference to the market value of the property at the time of the acquisition. The further away one moves from that point of reference and determination, the closer one gets to concerns on the lawfulness of such acquisitions as the market values will differ over time. Hence, the substantial amendments to Act 486 *vide* the Land Acquisition (Amendment) Act 1997 (Act A999) which came into force with effect from March 1, 1998, to ensure that the hearing and making of acquisition awards are completed within a strict time frame of two years, failing which the acquisition will lapse.

See also the decision of the Court of Appeal in *Pengarah Tanah Dan Galian Negeri Kedah & Anor v. Emico Development Sdn Bhd* [2000] 1 CLJ 86; [2000] 1 MLJ 257, CA.

[33] Hence, once the acquisition process has come to an end, the respondents cannot retrospectively amend the s. 8 declaration as in Form D, see *Asmth Sdn Bhd & Anor v. Pentadbir Tanah Daerah Johor Bahru & Anor* [2007] 8 CLJ 445 HC. If such amendments are allowed, particularly after more than two years from the date of the initial s. 8 declaration, it would defeat the intent of Parliament in enacting sub-s. 8(4) of the LAA mandating the acquisition process to be completed within two years.

Applicant An Aggrieved Person

[34] The respondents have questioned the *locus standi* of the applicant in making the judicial review application. The respondents submit that the applicant lacks *locus* as it is not the registered owner of the lands. However, the applicant contends that up until when the second respondent took possession of the lands on 19 December 2017, it was in occupation of the lands. As an occupier of the lands, the applicant is deemed as a person interested in the land and *prima facie* entitled to compensation in the land acquisition. See *Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd* [2017] 8 CLJ 392. In fact, the attendance sheets at the land enquiry shows that the representatives of the applicant were present and they were allowed to participate in the enquiry by the second respondent. Further, the applicant had entered into a supplemental sale and purchase agreement and continued with the purchase of the lands, after the first declaration was made as the proposed housing development was still viable. Hence, the applicant

had placed reliance on the first declaration in making its commercial decision to proceed with the purchase of the lands. Even after the second declaration was made, the applicant proceeded with the purchase as the proposed development was still viable. However, if the lands are acquired according to the impugned declaration, the applicant's proposed development is no longer viable as the remainder of the land is no longer suitable for development. The second respondent after taking possession of the lands according to the areas stipulated in the impugned declaration had demolished the applicant's structures on the land. This would clearly make the applicant an aggrieved person within the meaning of the term as used in O. 53 r. 2(4) of the Rules of Court 2012, and would thus have the *locus standi* to institute this judicial review application.

[35] Therefore, I find that under s. 8(2) of the LAA, any amendment to the List of Scheduled Lands as in Form C must be made prior to the publication of Form D in the Government *Gazette*. In this regard, I find that the impugned declaration is procedurally improper and *ultra vires* the provisions of the LAA. Thus, the amending of the List of Scheduled Lands after the issuance of the Form K and further appending a List of Scheduled Lands that were not *gazetted* to the Form K is an abuse of process and clearly *ultra vires* the powers of the second respondent.

[36] The Land Administrator's purported act of informing the attendees at the land enquiry of the errors in the second declaration despite knowing that strict compliance with provisions of the LAA is required cannot cure the impropriety. Parties are in any event not entitled to waive legislative requirements by agreement between parties. (see *Chase Perdana Bhd v. Md Afendi Hamdan* [2009] 6 CLJ 501 FC). There must be strict compliance of the procedural requirements of the LAA.

The law

[37] It is well settled that the High Court when hearing an application for judicial review does not sit in its appellate jurisdiction but merely performs its supervisory jurisdiction. See *Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor* [1998] 1 CLJ 227; [1998] 1 MLJ 305 CA; *Minister Of Labour & The Government Of Malaysia v. Lie Seng Fatt* [1990] 1 CLJ 1103; [1990] 1 CLJ (Rep) 195; [1990] 2 MLJ 9 SC. Judicial review is not to interfere but to intervene where there is illegality, procedural impropriety or irrationality and possibly proportionality.

[38] Further, in *R Rama Chandran v. The Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 FC; and *Booi Kim Lee v. YB Menteri Sumber Manusia, Malaysia & Anor* [1999] 4 CLJ 121; [1999] 3 MLJ 515 HC, the courts adopted the *dicta* of Lord Diplock in *Council of Civil Services Unions*

& Ors v. Minister of Civil Service [1985] AC 374 and stated that the courts can, by way of judicial review, interfere with an act of an executive authority in generally three different circumstances, namely:

(i) Illegality - that is when the authority concerned has been guilty of an error of law in its action, ie, purporting to exercise a power it does not have and/or acting *ultra vires* its powers. This allows the courts to scrutinise such decisions not only for process, but also for substance (see *Syed Mubarak v. Majlis Peguam Malaysia* [2000] 3 AMR 3048; [2000] 4 MLJ 167; and *Lam Eng Rubber Factory (M) Sdn Bhd v. Pengarah Alam Sekitar, Negeri Kedah dan Perlis & Anor* [2005] 2 CLJ 159; [2005] 2 AMR 471).

(ii) Irrationality - that is when the authority exercises its power in such an unreasonable manner that the decision is so outrageous that it defies logic and that a person having put his mind to the question could not have arrived at such a decision, ie, the *Wednesbury* unreasonableness principle - see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223.

(iii) Procedural impropriety - that is the authority's failure to observe procedural rules expressly laid down in the legislative instrument by which its jurisdiction is conferred, the breach of which may or may not involve denial of natural justice. See *M Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor* [2005] 3 CLJ 778; [2005] 5 MLJ 393.

[39] Lord Diplock mentioned 'proportionality' as a possible fourth ground of review and the Federal Court in *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 FC said that such a principle is recognised as a general principle of English law, and when applied, it enables the court to review an impugned decision for substance as well as process. Indeed, in industrial and employment law, the principle of proportionality is well recognised and has been a ground for judicial review. See *Harianto Effendy Zakaria & Ors v. Mahkamah Perusahaan Malaysia & Anor* [2014] 8 CLJ 821 FC.

[40] I find that in the present application, for reasons discussed earlier, the respondents had acted in excess of jurisdiction in issuing the impugned declaration. And as such, the respondents are guilty of an error of law in their action, ie, purporting to exercise a power that they do not have and/or acting *ultra vires* their powers. Thus, the action and/or decision of the respondents in issuing the impugned declaration amounts to an illegality that is susceptible to curial intervention by this court.

[41] Thus, the applicant's judicial review application was allowed, and pursuant to O. 53 r. 2(3), the following orders were made:

(i) it is hereby declared that any corrections or amendments to the list of scheduled lands in Form C issued pursuant to s. 8(2) of the Land Acquisition Act 1960 can only be made prior to the issuance of the Form K in accordance to s. 22 of the Land Acquisition Act 1960;

(ii) it is hereby declared that the issuance of the correctional declaration of intended acquisition dated 9 November 2017 purportedly made pursuant to s. 8 of the Land Acquisition Act 1960 in respect of the lands held under HSD 25128 PT 25163 and HSD 25130 PT 25165 both in the Mukim of Bandar Ampang Daerah Hulu Langat, Selangor *vide Gazette* Notification of the State Government of Selangor No. 3709 ("the impugned declaration") is illegal and *ultra vires* the powers granted to the second respondent pursuant to the said s. 8;

(iii) an order of *certiorari* is issued to bring into this court and quash the impugned declaration and the said impugned declaration is hereby quashed;

(iv) that the second respondent is entitled to take possession only of the scheduled lands stipulated in the Form D declaration of intended acquisition dated 22 November 2016 gazetted on 9 December 2016 and that the Form K shall correspond to this declaration of intent;

(v) the second respondent's taking into possession of lands other than those stipulated in the Form D declaration of intended acquisition dated 22 November 2016 gazetted on 9 December 2016 is trespass and an inquiry is ordered to be held to determine damages, if any, suffered by the applicant as a result of the second respondent's trespass;

(vi) cost in the sum of RM10,000 to be borne by the respondents.